

Service Date : June 13 , 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER OF LACASA GRANDE	)	UTILITY DIVISION
ESTATES WATER COMPANY, Complaint	)	
by JEROME WOODWARD, et al.,	)	DOCKET NO. 91.5.19
Concerning Watering Restrictions.	)	ORDER NO. 5559

PROPOSED ORDER

FOR THE COMPLAINANTS:

Mary Wright, Staff Attorney, Montana Consumer Counsel, 34  
West Sixth Avenue, Helena, Montana 59620

FOR THE DEFENDANT:

Robert Cummins, Attorney at Law, 1 Last Chance Gulch,  
Helena, Montana 59601

FOR THE COMMISSION:

Martin Jacobson, Staff Attorney, Montana Public Service  
Commission, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

BOB ANDERSON, Commissioner & Presiding Officer  
HOWARD L. ELLIS, Chairman  
WALLACE W. "WALLY" MERCER, Commissioner

BACKGROUND

1 . The complaint commencing this action before the Montana Public Service Commission (PSC) was filed May 3, 1991 against LaCasa Grande Estates Water Company (LaCasa), a public utility. The complaint was made by Jerome Woodward and approximately 70 others, all being customers of LaCasa and residents of LaCasa Grande Estates Subdivision at East Helena, Montana. Intervention has also been granted to others, including the Montana Consumer Counsel, who has undertaken representation of the complainants.

2. The complaint asserts that domestic lawn and garden irrigation restrictions imposed on the customers of LaCasa for the May 1, 1991 to September 10, 1991, irrigation season are unjust and unreasonable. The complaint requests relief from the PSC in the form of a revision of the watering restrictions, replacement with practical and realistic restrictions, establishment of enforcement of the new restrictions by LaCasa, and implementation of proper maintenance, repairs, and replacement of LaCasa's pumps for improved service.

3. LaCasa answered the complaint by challenging the jurisdiction of the PSC to address watering restrictions, answering the assertions by denial and explanation, and by requesting an operating rule pertaining to enforcement of restrictions.

4. The matter was heard Thursday, June 6, 1991, at evening session from 7:00 p.m. to 11:30 p.m. Witnesses testified and argument was presented. The parties agreed that a proposed order would issue from the PSC within 10 days of the hearing and the parties would have 10 days, with liberal grant of extension for cause, to file exceptions.

#### FINDINGS OF FACT

5. LaCasa is a public utility serving the LaCasa Grande Estates Subdivision at East Helena, Montana. This subdivision includes about 140-145 residential consumers having lot sizes of average or approximate area of one-half acre and lawns-varying in size, but comprising only a portion of the areas.

6. LaCasa has had on file with the PSC, at least since 1977,

tariffs establishing its rates and operating rules. A general reading of its rates and rules as of May 24, 1982, demonstrate that lawn irrigation is contemplated by LaCasa. Historically, LaCasa has provided, and its customers have used, water for lawn irrigation.

7. However, there has been, at least in recent years, some inability on LaCasa's part to supply all of its consumers' demands at times. Usually, if not always, this occurs during the irrigation season. For the purpose of this case only, this inability should not be viewed as implying anything negative, in and of itself, as to LaCasa's adequacy of service. There are some indications that consumer excessive demands and waste might play a significant part.

8. The watering restrictions complained of were issued by LaCasa to its customers on or about April 10, 1991. For the period of May 1, 1991 through September 10, 1991, the restrictions, in sum, permit only hand held watering, on alternate days by street address, and never between the hours of 5:00 p.m. and 8:00 p.m.

9. LaCasa explains that this is an effort to strike a balance between consumer demand and system capacity. LaCasa explains that this is a means to maintain adequate pressure in the system and thereby abide by standards expressed by a witness in a pending civil action against LaCasa.

10. Although the "hand held only" requirement is not without some positive merit as, if adhered to, it virtually guarantees that watering is not inadvertently left unattended, it is unreasonable under the circumstances. From all appearances it relies primarily on inconvenience to

consumers as a means of conservation. But for the sheer inconvenience, nothing in the record shows that hand held watering should be favored over some movable, moving, timed, or automatic watering system.

11. On or about January 2, 1991 LaCasa issued a water restrictions proposal which proposed no watering during times of high domestic use. It proposed any type of watering from midnight to 4:00 a.m., hand held watering from 9:00 a.m. to noon, alternate days by street address, and no watering on Sundays or holidays as identified. It proposed or suggested that a battery powered timer switch be used to control watering.

12. Although not unanimous, this January proposal seemed to be a preferred program of restrictions according to the witnesses testifying on behalf of the complainants.

13. Watering restrictions can be meaningless without some reasonable means of enforcement.

14. For the purposes of this matter, proper maintenance, repair and replacement of LaCasa's pumps is adequately being performed.

#### CONCLUSIONS OF LAW

15. LaCasa is a public utility under the provision of Section 69-3-101, MCA.

16. LaCasa, as a public utility, is under the jurisdiction of the PSC pursuant to Section 69-3-102 MCA, and other, signs in Title 69, MCA. This section and Title 69, MCA, provide for full power of supervision, regulation, and control by the

PSC.

17. LaCasa, as a public utility, is required to furnish reasonably adequate service and facilities at reasonable and just rates pursuant to Section 69-3-201, MCA, and other provisions in Title 69, MCA.

18. LaCasa's tariffed operating rules contemplate, in a general sense, lawn irrigation restrictions when necessary. The Administrative Rules of the PSC allow for lawn irrigation restrictions as provided in ARM 38.5.2503~7).

19. Any limitation or restriction imposed on consumers by a public utility raises a question of adequacy of service. The PSC has the power and authority to hear and decide such matters.

20. The PSC has jurisdiction over a complaint by consumers against LaCasa when such complaint bears on adequacy of service.

21. There is conflicting evidence as to the cause and need for restrictions. Because of this, under the customary rules for burdens of proof and persuasion, the blame for whatever cause exists cannot rest on LaCasa. For the same reason LaCasa's determination that restrictions be imposed cannot be set aside. There are ,however, two critical qualifications to this.

22. First, it cannot be denied that this matter before the PSC has proceeded in an expedited fashion. Matters as important as pinpointing the cause as falling on the consumer, the utility or both justify a more detailed

analysis and a more thoughtful and prepared approach allowing for these things. The urgency of the irrigation season and the sincere feelings of both the consumer and utility justified expedited action in this matter.

23. Therefore, the entire question of LaCasa's ability to provide adequate services and the cause and need for lawn irrigation restrictions must be viewed again. The order in this case is confined to the purpose of this case only and the 1991 LaCasa irrigation season only.

24. Second, although the decision to impose lawn irrigation restrictions is upheld, the specific restrictions imposed by the April 10, 1991 program are unreasonable.

25. New restrictions may and should be, in this instance, imposed by the PSC. The new restrictions should be reasonable to all concerned and must be lawful. The restrictions must include a means of enforcement. The restrictions must be based on sound conservation policies.

#### ORDER

1. This Order shall be effective ten days after the service date identified on the top of page one, unless the parties agree to an earlier date, unless exceptions are filed, or unless an extension is granted for cause.

2. LaCasa shall within the times specified from the effective date and by any reasonable means designed to assure that the consumers of LaCasa, the Montana Consumer Counsel and the PSC are notified:

a. within five days rescind the April 10, 1991 irrigation

restrictions;

- b. within five days issue new irrigation restrictions and enforcement provisions as set forth in paragraphs 3 and 4 of this Order; and
- c. within 20 days issue a conservation memorandum outlining sound domestic water use and lawn irrigation guides for conservation, including alternative lawn vegetation, efficient irrigation systems, automatic timers, and optimal water application practices.

3. New Lawn Irrigation and Outside Water Use Restrictions. The water use restrictions contained in the proposal issued by LaCasa on January 2, 1991 shall be in effect through August 31, 1991.

4. Enforcement of Restrictions. Enforcement shall be in three stages as follows:

- a. On the first violation a written warning may be issued.
- b. On the second violation a written notice of noncompliance may be issued and include notice of a \$10 conservation fee assessment to be billed on the next month's water bill. Failure to pay the conservation fee shall constitute grounds for termination under rules of the PSC for delinquent water bills.
- c. On the third violation a written notice of continued noncompliance may be issued and include notice of shut off at the curb cock on the first business day following the third violation and notice that a \$25 turn on fee will be assessed to restore water service.

5. LaCasa shall communicate with the newly-created LaCasa

Grande Estates Subdivision homeowners' association and extend an invitation to meet and discuss matters of concern involving LaCasa. LaCasa is under no obligation to communicate with the association at unreasonable times or under unduly contentious conditions.

6. LaCasa's motion concerning PSC jurisdiction is denied.

7. LaCasa's motion for a permanent operating rule pertaining to enforcement of watering restrictions is denied.

8. The complainants' request for relief pertaining to maintenance, repair, and replacement of pumps is denied.

9. The issues of adequacy of service, water restrictions, and replacement of equipment, and a permanent rule or rules bearing on these, including permanent rules for enforcement, will be addressed in LaCasa's pending rate case, Docket No. 91.2.3.

Done and Dated this 12th day of June, 1991 by a vote of 3-0.



BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Chairman

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BOB ANDERSON, Commissioner

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WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck

Commission Secretary

(SEAL)

NOTE: This Proposed Order is a proposal for decision. By agreement, each party has the opportunity to file exceptions, present briefs, and have oral argument before the PSC prior to Final Order. Exceptions and briefs must be filed within 10 days of the service date of this Proposed Order. Briefs opposing exceptions must be filed within 5 days thereafter. Oral argument, if requested, must be requested at or prior to the time of briefing.